

## **CITY OF ALAMEDA**

### **Memorandum**

To: Honorable Chair and  
Members of the Alameda Reuse and Redevelopment Authority

Honorable Mayor and  
Members of the City Council

From: Donna Mooney  
Acting City Attorney/Acting General Counsel

Date: March 15, 2011

Re: Authorize the Acting Executive Director and Acting City Manager to  
Bind Pollution Legal Liability Insurance Coverage for Alameda Point  
With XL Environmental for a Cost of \$720,112.

---

### **BACKGROUND**

In 2001, the Alameda Reuse and Redevelopment Authority (ARRA) purchased a Pollution Legal Liability (PLL) insurance policy from the insurance carrier XL Environmental to address personal injury, property damage, remediation costs and defense costs arising from pollution conditions at the former Naval Air Station Alameda, commonly referred to as Alameda Point. The 10-year policy, which cost \$681,014 in 2001, is set to expire on March 21, 2011. The coverage limits and self-insured retention are different in the expiring policy than are available today, so a comparison is not straightforward.

### **DISCUSSION**

It is important that the ARRA maintain PLL coverage to facilitate redevelopment of Alameda Point. In the past 10 years, the Navy has made considerable progress in remediating areas of the Alameda Point property to standards required for the anticipated future use of the property. The Navy continues to clean the property as its yearly budget allows and as required by the environmental regulatory agencies. The benefits of PLL insurance include protection of ARRA from catastrophic liability arising from preexisting (Navy-created) conditions at the property as well as new conditions that arise during the term of coverage. In addition, the coverage contemplated could facilitate development of the property by demonstrating that an independent, financially responsible party has evaluated Alameda Point and underwritten its environmental risks. Even though the Navy is responsible for cleaning up the property and is legally obligated to indemnify future property owners for claims arising from the contamination, the PLL policy helps ensure prompt cleanup.

**CC/ARRA/CIC**  
**Agenda Item #3-A**  
**03-15-11**

Staff recently engaged in a competitive process to award a contract for a new 10-year environmental insurance policy. Two insurance carriers, XL Environmental and Chubb Insurance Company (Chubb), submitted proposals. The bid from XL Environmental had a cost of \$720,112 and from Chubb a cost of \$372,806. The bids include state fees.

Although the Chubb proposed policy is less expensive, there are significant differences between what the two carriers are willing to insure, rendering the Chubb policy less protective of ARRA. Chubb will not cover bodily injury and property damage liability arising from asbestos and lead-based paint, which present a great liability risk to ARRA. Chubb will not provide coverage of Term 1 for conditions existing before 2001. Additionally, Chubb will not allow the ARRA to finance the insurance premium, while the XL Environmental policy offers interest-free financing of 50 percent of the premium for one year. Chubb also provides no coverage for mold. Exhibit 1 provides a detailed comparison between the existing XL Environmental, proposed XL Environmental, and proposed Chubb policies.

Staff recommends that the ARRA governing board and City Council award a contract to XL Environmental. The more extensive coverage justifies the higher cost. Exposure to asbestos and lead-based paint is one of the highest risks associated with the development of the former base. The proposed policy also makes clear that ARRA has coverage for mold. And for the first time, the City will have coverage of Term 1 for conditions existing before 2001. The cost for the XL Environmental coverage is \$1.75 million dollars less than was budgeted for the policy in the ARRA budget.

Coverage provided in the XL Environmental proposal will include remediation of known and unknown environmental contamination, bodily injury and property damage arising from pollution conditions and defense costs. The recommended insurance policy is for a term of 10 years with limits of \$25 million per occurrence and \$50 million in the aggregate, subject to a \$250,000 self-insured retention. Staff believes these limits are adequate in light of the continuing progress the Navy has made in cleaning the contaminated sites and the City's experience with the clean-up of two previously unknown contaminated sites on the East Housing and Fleet Industrial Supply Center properties. The remediation at these sites, where contamination was found that had not been previously known or was underestimated, totaled \$4.5 million and \$1.5 million, both of which were covered by insurance.

Not all environmental risks are addressed in the XL policy. Remediation (to be distinguished from property damage and bodily injury claims) for asbestos-containing materials and lead-based paint are excluded by both insurance carriers. Asbestos-containing materials and lead-based paint in buildings receive routine maintenance to prevent deterioration. Such remediation (maintenance) is readily budgeted and poorly suited to insurance. These contaminants are viewed in the insurance industry as known and identifiable pre-existing conditions for which coverage is routinely excluded. However, if prior construction, renovation, or demolition activities had caused unknown asbestos or lead contamination of soil, then the XL Environmental PLL policy would respond to clean it up. Similarly, underground storage tank removal and remediation is

excluded due to the widespread experience elsewhere of discovering tanks. The exclusions also list an early transfer restriction. XL will review any proposed early transfer situation and may exclude a known condition that the transferee plans to clean up. The marsh crust, a well-characterized contaminant at Alameda Point, is excluded. The City's Marsh Crust Ordinance provides detailed measures to be taken when digging or other construction activities may lead to an encounter with it. Violations of land-use controls are also excluded. For example, housing that is inadvertently located where residential land use is restricted, would not be covered by the policy.

#### FINANCIAL IMPACT

The funds for this insurance policy are budgeted in the ARRA account. Two payments would be made: \$371,389.50 due on March 21, 2011 and \$348,722.50 due on March 21, 2012.

#### RECOMMENDATION

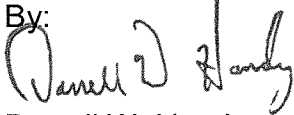
Authorize the Acting Executive Director and Acting City Manager to Bind Pollution Legal Liability Insurance Coverage for Alameda Point with XL Environmental for a Cost of \$720,112.

Respectfully submitted,



Donna Mooney  
Acting City Attorney/General Counsel

By:



Darrell W. Handy  
City Risk Manager

Approved as to funds and account,



Fred Marsh  
Controller

Exhibit: Pollution Legal Liability Renewal Overview  
Of Premium Quotes

**POLLUTION LEGAL LIABILITY RENEWAL  
OVERVIEW OF PREMIUM QUOTES  
ALAMEDA REUSE AND REDEVELOPMENT AUTHORITY  
ALAMEDA NAVAL AIR STATION  
March 21, 2011 Renewal Date**

FEATURES	XL Environmental Expiring Program	XL Environmental	Chubb
<b>NAMED INSURED</b>	Alameda Reuse and Redevelopment Authority	Alameda Reuse and Redevelopment Authority	Alameda Reuse and Redevelopment Authority
<b>ADDITIONAL NAMED INSUREDS</b>	Community Improvement Commission (CIC) City of Alameda Master Developer (TBD) Alameda Power & Telecom Housing Authority of the City of Alameda	City of Alameda Housing Authority of the City of Alameda Alameda Municipal Power Community Improvement Commission (CIC) East Bay Municipal Utility District (EBMUD)	Community Improvement Commission (CIC) City of Alameda Master Developer (TBD) Alameda Municipal Power Housing Authority of the City of Alameda Others TBD
<b>COVERED LOCATIONS</b>	The approximately 1,000 acres of the former Alameda naval air Station and Term 1 Parcel	EDC-1 through EDC-3; EDC-5 through EDC-19; PBC-1A, PBC-1B and the parcel designated as Term 1	Former Alameda Naval Air Station located on Alameda Island adjacent to the city of Alameda in Alameda County, California, as referenced in Paragraph 1 Leased Premises of Amendment No. 2 to the Lease in Furtherance of Conveyance document, including the Term 1 Parcel
<b>LIMITS OF LIABILITY</b>	\$100M per incident/\$100M policy aggregate	<u>Options:</u>  \$25M per incident/\$25M policy aggregate \$25M per incident/\$50M policy aggregate \$50M per incident/\$50M policy aggregate	<u>Options:</u>  \$25M per incident/\$25M policy aggregate \$25M per incident/\$50M policy aggregate \$50M per incident/\$50M policy aggregate
<b>SELF INSURED RETENTION</b>	\$250,000	<u>Options:</u>  \$250,000 \$500,000	\$250,000
<b>POLICY TERM</b>	10 Years	<u>Options:</u>  5 years 10 years	10 Years

CC/ARRA/CIC  
 Exhibit to  
 Agenda Item #3-A  
 03-15-11

**POLLUTION LEGAL LIABILITY RENEWAL  
OVERVIEW OF PREMIUM QUOTES  
ALAMEDA REUSE AND REDEVELOPMENT AUTHORITY  
ALAMEDA NAVAL AIR STATION  
March 21, 2011 Renewal Date**

FEATURES	XL Environmental Expiring Program	XL Environmental	Chubb
<b>PREMIUM PRICING</b> Notes: <ul style="list-style-type: none"> <li>The policies will be issued on non-admitted paper, therefore, the Insured will be responsible for any applicable taxes and fees, and with Marsh's assistance, filing all required affidavits to comply with the state Surplus Lines Laws</li> <li>Premiums are for entire policy term and do not reinstate annually</li> <li>Multi-year policy term applies with a single aggregate limit, which is not automatically reinstated annually</li> </ul>	\$681,014	<u>5 Year Term</u> \$25M/\$25M; \$250,000 SIR: \$327,273 \$25M/\$25M; \$500,000 SIR: \$289,345  \$25M/\$50M; \$250,000 SIR: \$387,014 \$25M/\$50M; \$500,000 SIR: \$339,668  \$50M/\$50M; \$250,000 SIR: \$471,501 \$50M/\$50M; \$500,000 SIR: \$422,162  <u>10 Year Term</u> \$25M/\$25M; \$250,000 SIR: \$589,784 \$25M/\$25M; \$500,000 SIR: \$521,434  \$25M/\$50M; \$250,000 SIR: \$697,445 \$25M/\$50M; \$500,000 SIR: \$612,122  \$50M/\$50M; \$250,000 SIR: \$849,701 \$50M/\$50M; \$500,000 SIR: \$760,787	<u>10 Year Term</u> \$25M/\$25M: \$275,844 \$25M/\$50M: \$361,071 \$50M/\$50M: \$498,165
	<b>Note:</b> The premium is 100% minimum earned at the inception of the policy period.	<b>Note:</b> For the 5 year term the premium is 75% minimum earned at the inception of the policy period. For the 10 year term the premium is 100% earned at the inception of the policy period.	<b>Note:</b> The premium is 100% minimum earned at the inception of the policy period.
<b>ESTIMATED SURPLUS LINES TAXES AND FEES</b>	NA	California – 3.25%	California – 3.25%
<b>FORM</b>	Pollution and Remediation Legal Liability Policy PARL3CP (7/99)	Pollution and Remediation Legal Liability Policy PARL6CP 0909	Environmental Site Liability Form (70-02-0501)
<b>CARRIER</b>	Indian Harbor Insurance Company	Indian Harbor Insurance Company	Chubb Custom Insurance company
<b>A.M. BEST RATING</b>	NA	A XV (Excellent)	A+ XV (Excellent)

**POLLUTION LEGAL LIABILITY RENEWAL  
OVERVIEW OF PREMIUM QUOTES  
ALAMEDA REUSE AND REDEVELOPMENT AUTHORITY  
ALAMEDA NAVAL AIR STATION  
March 21, 2011 Renewal Date**

<b>FEATURES</b>	<b>XL Environmental Expiring Program</b>	<b>XL Environmental</b>	<b>Chubb</b>
<b>FILING STATUS</b>	Non-Admitted	Non-Admitted	Non-Admitted
<b>PAYMENT TERMS</b>	50% of premium due at inception; remainder due at end of year 1	50% of premium due at inception; remainder due at 1 year anniversary	30 days from the effective date
<b>ADDITIONAL REQUIREMENTS</b> (prior to binding, unless otherwise noted)	NA	<u><b>Mandatory</b></u> <ol style="list-style-type: none"> <li>1. Completed and signed XL Environmental application.</li> <li>2. Two years of financials.</li> <li>3. Information on waterfront development, early transfer parcels, insured contracts and non-owned disposal sites (where available)</li> </ol>	<u><b>Mandatory</b></u> <ol style="list-style-type: none"> <li>1. Completed and signed Chubb application.</li> <li>2. Three years of financials.</li> <li>3. Engineering Survey</li> </ol>
<b>PRIMARY COVERAGE DESCRIPTION</b>	<b>XL Environmental: Claims-Made</b>	<b>XL Environmental: Claims-Made</b>	<b>Chubb: Claims-Made</b>
<b>Onsite Cleanup Resulting from Pre-Existing and New Conditions – 1<sup>st</sup> Party Trigger</b>	Included	Included	Included
<b>Offsite Cleanup Resulting from Pre-Existing and New Conditions – 3<sup>rd</sup> Party Trigger</b>	Included	Included	Included
<b>Onsite and Offsite Third Party Bodily Injury and Property Damage Resulting from Pre-Existing and New Conditions</b>	Included	Included	Included
<b>Legal Defense Expense</b>	Within the Limit of Liability	Within the Limit of Liability	Within the Limit of Liability
<b>Asbestos and Lead Based Paint – Bodily Injury</b>	Included Abatement, Property Damage, Remediation Expense and Legal Defense Expense are excluded	Included Also included property damage and legal defense expense. Abatement is excluded	Not Included

Note: This is a summary of preliminary market indications and may not reflect all the terms, conditions and exclusions of the actual policy. This document should not used independently. In the event of a claim, the terms, conditions and exclusions of the actual policy issued will apply. Page 3 of 4

**POLLUTION LEGAL LIABILITY RENEWAL  
OVERVIEW OF PREMIUM QUOTES  
ALAMEDA REUSE AND REDEVELOPMENT AUTHORITY  
ALAMEDA NAVAL AIR STATION  
March 21, 2011 Renewal Date**

<b>FEATURES</b>	<b>XL Environmental Expiring Program</b>	<b>XL Environmental</b>	<b>Chubb</b>
<b>Non-Owned Disposal Sites</b>	Included 5 can be scheduled	Included 2 can be scheduled	Included 10 can be scheduled
<b>Underground Storage Tanks</b>	Excluded unless scheduled	Excluded unless scheduled	Excluded unless scheduled
<b>Fungus and Legionella Coverage – Cleanup and 3<sup>rd</sup> Party Bodily Injury and Property Damage</b>	Form is Silent	Included	Not Included
<b>Builders Soft Costs</b>	Included \$2M Sublimit	Not Included	Included \$2M Sublimit
<b>Diminution in Value of Covered Location</b>	Included	Not Included	Not Included
<b>Illicit Abandonment</b>	Not Included	Included	Included
<b>Independent Counsel</b>	Included	Included	Not Included
<b>Non-Criminal Fines and Penalties</b>	Included	Included	Included
<b>Assignment of Policy</b>	Included With Consent of company	Included With Consent of Company	Included With Consent of Company
<b>Aggregate SIR</b>	Included SIR is aggregated at \$1,250,000 with a \$25,000 maintenance SIR	Included SIR is aggregated at \$1,250,000 with a \$25,000 maintenance SIR	Included SIR is aggregated at \$1,250,000 with a \$25,000 maintenance SIR
<b>Business Interruption</b>	Included 3 Day Deductible	Included 7 Day Deductible and \$5M Sublimit	Included 3 Day Deductible
<b>Insured Contract Schedule</b>	Included	Included	Included
<b>Choice of Law</b>	Deleted From Policy Form	Deleted from policy form	Court of Competent Jurisdiction in the US
<b>Cancellation Notice</b>	90 Days	90 Days	90 Days for Non-Renewal

**POLLUTION LEGAL LIABILITY RENEWAL  
OVERVIEW OF PREMIUM QUOTES  
ALAMEDA REUSE AND REDEVELOPMENT AUTHORITY  
ALAMEDA NAVAL AIR STATION  
March 21, 2011 Renewal Date**

<b>FEATURES</b>	<b>XL Environmental Expiring Program</b>	<b>XL Environmental</b>	<b>Chubb</b>
<b>NOTABLE EXCLUSIONS</b>	<ul style="list-style-type: none"> <li>• Early Transfer Exclusion</li> <li>• Asbestos and Lead Based Paint Abatement, Property Damage, Legal Defense</li> <li>• Known underground storage tanks are excluded unless scheduled</li> </ul>	<ul style="list-style-type: none"> <li>• Early Transfer Restriction</li> <li>• Asbestos and Lead Based Paint Abatement</li> <li>• Marsh Crust Exclusion</li> <li>• Environmental Land Use Controls and Engineering Controls Violation Exclusion</li> <li>• Material Increase in Risk Exclusion</li> <li>• Known underground storage tanks are excluded unless scheduled</li> </ul>	<ul style="list-style-type: none"> <li>• Early Transfer Exclusion</li> <li>• Asbestos and Lead Based Paint Abatement, Bodily Injury, Property Damage and Legal Defense Exclusion</li> <li>• Mold Exclusion</li> <li>• Known underground storage tanks are excluded unless scheduled</li> </ul>
<b>RETROACTIVE DATE</b>	March 21, 2001 for Term 1 Only	None	March 21, 2001 for Term 1 Only
<b>OTHER NOTES</b>	<p>Defense is provided within policy limits.</p> <p>Multi year options include a shared aggregate limit that is not reinstated annually.</p>	<p>Defense is provided within policy limits.</p> <p>Terrorism Coverage is excluded, unless purchased at additional 2% of premium chosen.</p> <p>Multi year policies apply with a single aggregate that is not reinstated annually.</p>	<p>Defense is provided within policy limits.</p> <p>Terrorism Coverage is excluded, unless purchased at additional 5% of premium chosen.</p> <p>Multi year policies apply with a single aggregate that is not reinstated annually.</p>